

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RED 1 INVESTMENTS, INC.

NO. CV-06-279-LRS

Plaintiff,

v.

AMPHION INTERNATIONAL LTD.,  
AMPHION INTERNATIONAL INC.

ORDER RE VIOLATION OF  
PERMANENT INJUNCTION AND  
DENYING BROWN'S MOTION TO  
DISMISS

## Defendants.

## I. BACKGROUND

On August 20, 2005, Red 1 Investments, Inc. ("Red 1") filed a UCC Financing Statement on a security interest in all accounts, interest, collateral and intellectual property of Amphion International Limited ("Amphion") which secures a debt obligation associated with the sale of certain water disinfection and other technologies. Ct. Rec. 1, Compl., Ex. F. Red 1's financing statement was filed in the Muscogee County Clerk's Office in the state of Georgia. Currently, the security interest of Red 1 has not been satisfied as of today's date.

The present action was filed in this court on September 26, 2006 after Amphion defaulted on its obligations to Red 1. Ct. Rec. 1. On February 28, 2007, the court entered a Default Judgment in favor of Red

1 1. Ct. Rec. 35. On that same date, the court issued an Order for  
2 Permanent Injunction which restrained "[Amphion], [its] agents,  
3 employees, and all other persons, firms, or corporations acting or  
4 claiming to act in [Amphion's] behalf, or in concert or participation  
5 with [Amphion], and any other individual or entity duly served with a  
6 copy of this order." Ct. Rec. 36, Permanent Inj., ¶2. The Judgment and  
7 Order were registered in the United States District Court for the  
8 Southern District of Georgia on April 9, 2007. Ct. Rec. 44, Delaney  
9 Decl., at 5. Red 1 ascertained that Vickie Brown and/or Coastal  
10 Logistics, Inc. ("Coastal") were in possession of property subject to Red  
11 1's security interest. In April 2007, Red 1 effected service of the  
12 Permanent injunction by hand delivery to Ms. Brown and Coastal. Id. at  
13 3. Despite several requests by Red 1, Ms. Brown refuses to turn over the  
14 property subject to Red 1's security interest. Ct. Rec. 44, Delaney  
15 Decl., at 4, ¶10.

16 On June 8, 2007, after learning of the Court's Default Judgment and  
17 Permanent Injunction, Ms. Brown filed a Petition for Declaratory Judgment  
18 and injunctive Relief in Superior Court of Chatham County, State of  
19 Georgia. In that petition, Ms. Brown asks the Georgia Superior Court to  
20 "temporarily enjoin and restrain any further proceedings" related to Red  
21 1's Default Judgment and Permanent Injunction. Ct. Rec. 52, at 30, ¶9.  
22 Red 1 is "aggressively defending this action in large part on the basis  
23 that issues related to Red 1's interest in the collateral must be  
24 adjudicated here in the Eastern District of Washington." Ct. Rec. 55,  
25 at 3.

26

1       On or about August 17, Red 1 moved this court for the issuance of  
2 a Contempt Order, Ct. Recs. 41, 45, supported by the declarations of  
3 Howard Delaney and Donald Condon. Ct. Recs. 43-44. On August 28, 2007  
4 this court ordered Vickie Brown to show cause in writing why she should  
5 not be found in contempt of court for violating the Permanent Injunction  
6 entered on February 28, 2007, Ct. Rec. 37, for her refusal to turn over  
7 collateral to which Red 1 Investments has a security interest. Red 1  
8 requested that Vickie Brown be enjoined and stayed from selling any  
9 collateral in which Red 1 Investments has advised Vickie Brown of its  
10 security interest in the same and applicability of the Permanent  
11 Injunction.

12       On August 30, 2007, as reflected by the Affidavit of Service filed  
13 with the court, Ms. Brown was served with a copy of the show cause order  
14 and related pleadings. Ct. Rec. 48. On September 28, 2007, Ms. Brown  
15 filed, in response to the Show Cause Order, "Vickie Brown's Motion to  
16 Dismiss for Lack of Personal Jurisdiction and for an Award of Attorneys'  
17 Fees," Ct. Rec. 49. The issue squarely before this court is whether the  
18 court that orders a Permanent Injunction may exercise jurisdiction over  
19 a nonparty, Georgia resident that allegedly knowingly aided and abetted  
20 a violation of the Permanent Injunction.

21       **II. ANALYSIS**

22       Before the court can reach the question of whether Ms. Brown  
23 actually disobeyed the order, two jurisdictional questions must be  
24 resolved. The first question is whether this court has personal  
25 jurisdiction over Ms. Brown. The second question is whether this court  
26 has subject matter jurisdiction to proceed against her.

1           **A. Preliminary Jurisdiction**

2           At the outset of the analysis, this court must first determine if  
3 it has jurisdiction over Vickie Brown. Initially, the court asserts  
4 jurisdiction to determine whether it has personal jurisdiction over Ms.  
5 Brown, a nonparty outside the territorial jurisdiction of the Eastern  
6 District of Washington, in order to properly hold that she is or is not  
7 in contempt. The power of the court to exercise this preliminary  
8 jurisdiction is well settled, and Ms. Brown does not dispute that the  
9 court has such authority. *See United States v. United Mine Workers*, 330  
10 U.S. 258, 293, 67 S.Ct. 667, 695-96, 91 L.Ed. 884 (1947); *Familia de Boom*  
11 *v. Arosa Mercantil, S.A.*, 629 F.2d 1134, 1137 (5th Cir.1980); *Atlantic*  
12 *Las Olas, Inc. v. Joyner*, 466 F.2d 496, 498 (5th Cir.1972); 13 Wright,  
13 Miller & Cooper, *Federal Practice and Procedure, Jurisdiction* 2d, § 3536  
14 (1984).

15           Non-parties may be held in civil contempt of a court ordered  
16 injunction on the grounds that they are either: (1) successors in  
17 interest to parties bound by the order or (2) aiders and abettors to a  
18 violation of the order by a party thereto. *See generally Regal Knitwear*  
19 *Co. v. NLRB*, 324 U.S. 9, 14, 65 S.Ct. 478, 89 L.Ed. 661 (1945). This  
20 common law principle is codified in Rule 65 of the Federal Rules of Civil  
21 Procedure which provides that orders are binding upon parties to the  
22 order and their "officers, agents, servants, employees, and attorneys,  
23 and upon those persons in active concert or participation with them who  
24 receive actual notice of the order by personal service or otherwise."  
25 Fed.R.Civ.P. 65(d). The party seeking to enforce the terms of an  
26 injunction against a non-party bears the burden of showing that the

1 person sought to be enjoined is properly within the scope of the  
 2 injunction. *People v. Operation Rescue National*, 80 F.3d 64, 70 (2d  
 3 Cir.1996).

4 It has long been held, at least in the Second Circuit, that one who,  
 5 with actual notice of the order, "knowingly assists a defendant in  
 6 violating an injunction subjects himself to civil ... proceedings for  
 7 contempt." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832 (2d Cir.1930).  
 8 For such entities to be held in contempt they must aid and abet the party  
 9 named in the order ...." *Id.* at 832; *Paramount Pictures Corp. v. Carol*  
 10 *Publishing Group, Inc.*, 25 F.Supp.2d 372, 374 (S.D.N.Y.1998), *aff'd.*  
 11 *mem.*, 181 F.3d 83, 1999 WL 319328 (2d Cir.1999). Thus, a non-party who  
 12 is alleged to have acted in concert to aid and abet a violation of an  
 13 injunction can be held in contempt only upon the "predicate" finding that  
 14 the enjoined party has violated the order. *Levin v. Tiber Holding Corp.*,  
 15 277 F.3d 243, 250 (2<sup>nd</sup> Cir. 2002). Contempt will not lie against one who  
 16 "acts independently and whose rights have not been adjudicated."  
 17 *Paramount Pictures Corp.*, 25 F.Supp.2d at 374, quoting, *Heyman v. Kline*,  
 18 444 F.2d 65, 65-66 (2d Cir.1971).

19 The Fifth Circuit held in *Waffenschmidt v. MacKay*, 763 F.2d 711, 716  
 20 (5<sup>th</sup> Cir. 1985), *cert. denied*, 474 U.S. 1056, 106 S.Ct. 794, 88 L.Ed.2d  
 21 771 (1986) that nonparties who reside outside the territorial jurisdiction  
 22 of a district court may be subject to that court's jurisdiction if, with  
 23 actual notice of the court's order, they actively aid and abet a party in  
 24 violating that order. The *Waffenschmidt* court opined this is so despite  
 25 the absence of other contacts with the forum. In *Waffenschmidt*, the  
 26

1 resident defendant had defrauded the plaintiffs in connection with the  
 2 sale of securities. The resident defendant then passed the ill-gotten  
 3 gains on to nonresident defendants, who proceeded to "dissipate" the  
 4 money. When ordered to show cause why they should not be held in  
 5 contempt, the nonresident defendants (who had never been parties to the  
 6 action and who had not been named in the injunction) defended on the  
 7 ground that there was no personal jurisdiction. The court held that the  
 8 nonresident, nonparty defendants were "subject to the court's jurisdiction  
 9 as persons enjoined by the court's order." *Id.* at 715. The Fifth Circuit  
 10 affirmed:

11 When [respondents] knowingly participated in  
 12 [defendant's] scheme to dissipate the funds they  
 13 equally knowingly subjected themselves to the  
 jurisdiction of that court.

14 *Id.* at 717.

15 Ten years later, in *Reebok Intern. Ltd. v. McLaughlin*, 49 F.3d 1387  
 16 (9<sup>th</sup> Cir. 1995), it appears the Ninth Circuit, which this court is bound  
 17 to follow, expressed its approval of the Fifth Circuit's finding of  
 18 "super-contact" by the *Waffenschmidt* court:

19 In finding this "super-contact," the district court  
 20 relied on the Fifth Circuit's decision in  
 21 *Waffenschmidt v. MacKay*, 763 F.2d 711, 714 (5th  
 22 Cir.1985), cert. denied, 474 U.S. 1056, 106 S.Ct.  
 23 794, 88 L.Ed.2d 771 (1986). In that case, the Fifth  
 24 Circuit found that "[n]onparties who reside outside  
 25 the territorial jurisdiction of a district court may  
 26 be subject to that court's jurisdiction if, with  
 actual notice of the court's order, they actively aid  
 and abet a party in violating that order." *Id.* The  
 Fifth Circuit based its decision on both the inherent  
 authority of a court to enforce its injunctions and  
 the idea that a knowing violation of an injunction  
 would make litigation in the forum that issued it  
 foreseeable, and therefore within the notions of fair  
 play and substantial justice. See *id.* at 716-18,

1 721-23; Fed.R.Civ.P. 65(d). Although *Waffenschmidt*  
2 speaks in expansive terms, it was speaking about the  
3 authority of district courts within the United  
4 States. The court grounded its decision on the  
5 simple fact that the "mandate of an injunction issued  
6 by a federal district court runs nationwide...." *Id.*  
7 at 716. That being so, the court could hold enjoined  
8 parties in contempt, no matter in what state they  
9 violated the court's orders. *Id.* As the court went  
10 on to say: "The nationwide scope of an injunction  
11 carries with it the concomitant power of the court to  
12 reach out to nonparties who knowingly violate its  
13 orders." *Id.* at 717. Once the court accepted that  
14 proposition, it is not surprising that it determined  
15 that a national court which could issue nationwide  
16 orders could also reach out and enforce those orders  
17 on a nationwide basis by taking personal jurisdiction  
18 over violators. Of course, in *Waffenschmidt* the  
19 individuals held in contempt had accepted assets from  
20 the enjoined party after they knew that he was  
21 enjoined from transferring those assets. *Id.* at 723.  
22 A finding of personal jurisdiction over the violators  
23 in that instance may be sound, even necessary. But  
24 the strength of the analysis begins to crumble when  
25 a district court seeks to reach out across the  
26 Atlantic in an attempt to impose conflicting duties  
on another country's nationals within its own  
borders.

15 *Reebok*, 49 F.3d at 1391-92.

16 The next part of the court's analysis will examine the facts to  
17 determine if Vickie Brown was 1) subject to jurisdiction under the  
18 traditional "minimum contacts" analysis; and/or 2) knowingly violated the  
19 Permanent Injunction by active concert or participation with those  
20 directly enjoined. As *Waffenschmidt* suggests and the Plaintiff argues,  
21 it is the common law power to enforce its own injunction which district  
22 courts inherently possess coupled with the knowing, voluntary acts of Ms.  
23 Brown that form the basis for the court's proper exertion of personal  
24 jurisdiction over her in this contempt proceeding. Citing *World Wide*  
25 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62  
26

1 L.Ed.2d 490 (1980) *Waffenschmidt* specifically instructs that "[h]aling a  
 2 person into court only upon finding that the nonparty has aided in  
 3 knowingly violating an injunction fulfills traditional notions of fair  
 4 play and substantial justice because it is foreseeable that the person  
 5 would be required to respond in that forum." *Waffenschmidt*, 763 F.2d at  
 6 721.

7 Ms. Brown, on the other hand, vigorously argues that the assertion  
 8 of jurisdiction over her violates minimum due process requirements as  
 9 established by *International Shoe* and its progeny. Ct. Rec. 58 at 14.  
 10 Plaintiff counters that by finding a nonparty has aided a party in  
 11 knowingly violating an injunction, due process is satisfied. Ct. Rec. 55  
 12 at 9. In other words, Plaintiff seeks to hold Ms. Brown responsible for  
 13 the intended consequences which her purposeful nonforum activities had on  
 14 the subject matter of the court's order. Plaintiff implies that Ms. Brown  
 15 cannot complain that it was unforeseeable or unreasonable for her to be  
 16 haled before the court. Id. at 10.

17 B. Vickie Brown's Knowledge

18 The court has considered all of the declarations, including the  
 19 "Plaintiff's Supplemental Opposition to Vickie Brown's Motion to  
 20 Dismiss,"<sup>1</sup> which was filed on October 17, 2007.

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23 <sup>1</sup>Ms. Brown objects to the supplemental brief and accompanying  
 24 Stoneberger declaration due to its "untimeliness." Ct. Rec. 58 at 4.  
 25 However, Ms. Brown has filed a responsive declaration to Plaintiff's  
 26 supplement, , Ct. Rec. 59, which the court will equally consider.

1 Ms. Brown asserts that she essentially stumbled upon the Collateral  
 2 (some of Amphion's equipment) by mistake at a storage facility in  
 3 Savannah, Georgia known as Coastal Logistics near the end of October<sup>2</sup>  
 4 2006. Ct. Rec. 52, Brown Decl., ¶¶ 14-16. Evidence indicates that Ms.  
 5 Brown attended an emergency shareholders meeting in March 2006 in which  
 6 it was discussed that Amphion assets were being held in storage and needed  
 7 to be retrieved. Possible locations were discussed, including the storage  
 8 unit in Savannah, Georgia. Condon Decl., ¶¶ 7-9.

9 Ms. Brown asserts that she paid for the Collateral with her own  
 10 funds. Ct. Rec. 52, Brown Decl., ¶ 17. Plaintiff points out that Ms.  
 11 Brown does not disclose to the court how much she paid, when the payment  
 12 was issued, or to whom she paid. Ct. Rec. 55. At 4. Without such  
 13 evidence, it is difficult to prove she is a "bona fide" purchaser of the  
 14 Collateral.

15 On April 4, 2004, Red 1 filed a UCC-1 Financing Statement that put  
 16 the state of Georgia on notice of its superior interest in the Collateral.  
 17 Ct. Rec. 1, Compl., Ex. F. Ms. Brown claims that she did not know Red 1  
 18 had a security interest in the Collateral until April 18, 2007. Ct. Rec.  
 19 52, Brown Decl., ¶ 18. Contrary evidence indicates, however, that Ms.  
 20 Brown should have been aware of Red 1's claim in the Collateral and that  
 21 Red 1 had filed a UCC-1 Financing Statement security interest as early as  
 22 September 4, 2006 when Amphion (AII) Board Chair Darryl Wagner sent an e-  
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24 <sup>2</sup>In another declaration of Ms. Brown filed on October 24, 2007, she  
 25 states that her purchase of the Collateral was made in November of 2006.  
 26 Ct. Rec. 59, ¶3.

1 mail to AII Board members, shareholders, and investors advising them of  
2 a UCC filing on April 4, 2004 by Red 1 on Amphion (AII and AIL).  
3 Stoneberger Decl., Ex. A at 6. Ms. Brown was a recipient of this e-mail  
4 notice. Id. at 5. At the latest, though, according to Ms. Brown's April  
5 5, 2007 e-mail to Dr. Condon, she had talked to her attorney and was aware  
6 of Red 1's interest in the collateral. Ct. Rec. 43, at 28. In any event,  
7 the evidence indicates that Ms. Brown was aware of Red 1's security  
8 interest prior to April 18, 2007, the date she claims to have learned of  
9 the security interest.

10 Ms. Brown replies in her latest declaration of October 24, 2007 that  
11 although she read most of the e-mails, she did not even know what a "UCC"  
12 was. Ct. Rec. 59, ¶3. Ms. Brown further states that despite the e-mail  
13 sent to her on September 4, 2006, she did not have an understanding that  
14 Red 1 claimed to have a security interest in the equipment which she  
15 purchased from Coastal until Red 1 informed her of that claim in April  
16 2007. Id. Ms. Brown further declares that she thought the equipment she  
17 purchased was simply "abandoned." Id. Yet in Ms. Brown's e-mail to Dr.  
18 Donald Condon she states that "I've done my due diligence. I made sure  
19 when I purchased the equipment I was within my full legal rights to do  
20 so." Ct. Rec. 43, at 9. Plaintiff argues and the court agrees, that had  
21 Ms. Brown done her "due diligence" she surely would have uncovered Red 1's  
22 UCC Filing Statement.

23 C. Aiding/Abetting

24 Ms. Brown claims that she did not purchase the Collateral for Amphion  
25 or their investors. However, based on the e-mails with Dr. Condon in  
26 January and March 2007, one could conclude that she was advancing the

1 interests of all shareholders. Ct. Rec. 52, Brown Decl., ¶ 18; Ct. Rec.  
 2 43, at 6-7, 13. Plaintiff argues that although Ms. Brown portrays an  
 3 image to the court of someone who was not active with Amphion during the  
 4 time Red 1 was attempting to seize the Collateral, the various e-mails  
 5 demonstrate that Ms. Brown was part of the decision-making group who was  
 6 updated on Amphion's interests and frequently gave her opinions on a  
 7 course of action. Ct. Rec. 57, at 3. For example, On September 4, 2006,  
 8 AII Board Chair Darryl Wagner recommends that Vickie Brown or Brett  
 9 Stoneberger send out an update to Amphions investors in "regards to action  
 10 and our plan to contact Delaney [Red 1]." Stoneberger Decl., Ex. A at 6.  
 11 On that same day, September 4, 2006, Ms. Brown sent an e-mail in response  
 12 to the Wagner e-mail giving her advice and opinion on sending out an  
 13 update to the AII investors. Id. at 5. Further, on November 26, 2006,  
 14 after the date Ms. Brown allegedly purchased the Collateral from Coastal,  
 15 Vickie Brown sent an e-mail to AII demonstrating her active involvement  
 16 in AII and in finding the Collateral in which Red 1 has an interest.  
 17 Specifically Ms. Brown stated:

18 If Red One (Howard Delaney) has foreclosed on the  
 19 company what does Limited or Inc now have? . . . When  
 20 Howard seized the equipment was he able to seize all  
 21 of the equipment and units? Were all the units in  
 22 tact? Did John Gill hide part of the equipment or  
 23 was everything turned over to Red One?

24 Id. At Ex. C at 12.

25 The evidence shows the Ms. Brown was actively involved with Amphion while  
 26 Red 1 was attempting to legally account for its security interest.

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1           D. Minimum Contacts Analysis

2           The starting point in any determination of personal jurisdiction, of  
3 course, is the "minimum contacts" analysis first enunciated in  
4 *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945).  
5 The Ninth Circuit has broken down the "minimum contacts" analysis into  
6 three requirements that must be met before a nonresident defendant can be  
7 subjected to an exercise of jurisdiction. *Data Disc, Inc. v. Systems*  
8 *Technology Associates, Inc.*, 557 F.2d 1280, 1287 (9<sup>th</sup> Cir. 1977). The  
9 first requirement is that the defendant has done some act or consummated  
10 some transaction with the forum or performed some act by which he  
11 purposefully avails himself of the privilege of conducting activities in  
12 the forum, thereby invoking the benefits and protections of its laws. The  
13 second requirement is that the claim must be one which arises out of or  
14 results from the defendant's forum-related activities. The third  
15 requirement is that the exercise of jurisdiction be reasonable.

16           Ms. Brown argues that she resides in Effingham County, Georgia; has  
17 never traveled to the State of Washington; has never transacted business  
18 in the State of Washington; and has no contacts whatsoever with the State  
19 of Washington. Brown Decl. Ms. Brown further notes that she owns no  
20 property and has never transacted business with Red 1. Id. Plaintiff  
21 argues that Ms. Brown meets this "minimum contacts" requirement based on  
22 the fact that in Ms. Brown's case, she has aided a party in knowingly  
23 violating an injunction which satisfies due process. Plaintiff asserts  
24 that Ms. Brown, a nonparty and nonresident, is responsible for the  
25 intended consequences which her purposeful nonforum activities had on the  
26 subject matter of the court's order. Thus, Ms. Brown is arguably subject

1 to personal jurisdiction under the "minimum contacts" analysis, although  
 2 Plaintiff's alternative theory is a stronger argument.

3       E. Alternative Finding of Personal Jurisdiction

4       Plaintiff also argues that Ms. Brown is subject to personal  
 5 jurisdiction under the language of Federal Rule of Civil Procedure of  
 6 Civil Procedure Rules 5 and 71, and the injunction in this case.  
 7 Specifically, Plaintiff Red 1 argues that because Ms. Brown "acted in  
 8 concert" and "participated" with Defendant Amphion in disobeying this  
 9 court's orders, she submitted herself to the court's jurisdiction.

10       Ms. Brown, on the other hand, argues that this court does not have  
 11 personal jurisdiction over her, and even if it did, she has not violated  
 12 this court's Permanent Injunction. Ct. Rec. 51 at 2. Ms. Brown asserts  
 13 that in addition to lack of personal jurisdiction, service was improper  
 14 pursuant to FRCP 4.1 or any other applicable statute or civil rule.

15       Plaintiff argues that service was proper and Ms. Brown's reading of  
 16 Rule 4.1 is too restrictive. Plaintiff supports its argument by  
 17 explaining that the court in *Waffenschmidt* specifically found an argument  
 18 similar to Ms. Brown's improper service argument regarding Rule 4.1 as far  
 19 too restrictive. The Fifth Circuit noted in its jurisdictional analysis:

20       Courts do not sit for the idle ceremony of making  
 21 orders and pronouncing judgments, the enforcement of  
 22 which may be flouted, obstructed, and violated with  
 23 impunity, with no power in the tribunal to punish the  
 24 offender. [Federal] courts, equally with those of the  
 25 state, are possessed of ample power to protect the  
 26 administration of justice from being thus hampered or  
 interfered with.

27       *Waffenschmidt*, 763 F.2d at 716.

28       The *Waffenschmidt* court also noted that enforcement of an injunction  
 29 through a contempt action must occur in the issuing jurisdiction because

1 contempt is an affront to the court issuing the order. Id. (citation  
 2 omitted). Plaintiff concludes that FRCP Rule 71 gives the District Court  
 3 the power to enforce orders against "a person who is not a party . . . As  
 4 if a party." Fed. R. Civ. P. 71. Citing *Irwin v. Mascott*, 370 F.3d 924,  
 5 931 (9<sup>th</sup> Cir. 2004), Plaintiff argues that Rule 71 permits a district  
 6 court to use 'the same processes for enforcing obedience to the order as  
 7 if [he were] a party,' such as holding him in contempt for violating it."  
 8 By using the processes found in FRCP Rule 5, Plaintiff states that Ms.  
 9 Brown has been properly served. The court agrees with Plaintiff and finds  
 10 it unnecessary to address Ms. Brown's long-arm statute argument.

11 Where a defendant challenges the sufficiency of personal  
 12 jurisdiction, the plaintiff must bear the burden of establishing that the  
 13 court does have jurisdiction. *Cubbage v. Merchant*, 744 F.2d 665, 667 (9<sup>th</sup>  
 14 Cir.1984).

15 This step in the analysis necessarily requires the court to determine  
 16 if Ms. Brown is one that is bound by the injunction. The court finds  
 17 wisdom from a district court decision in *Lynch v. Rank*, 639 F.Supp. 69  
 18 (N.D.Cal. 1985) which wrote:

19 The seminal pronouncements regarding who may be bound  
 20 by an injunction can be found in *Alemite*  
*Manufacturing Corp. v. Staff*, 42 F.2d 832 (2d  
 21 Cir.1930), and in *Regal Knitwear Co. v. NLRB*, 324  
 U.S. 9, 65 S.Ct. 478, 89 L.Ed. 661 (1945). In  
 22 *Alemite*, Judge Learned Hand stated the general rule  
 on the scope of injunctions:

23 [N]o court can make a decree which will bind any one  
 24 but a party; a court of equity is as much so limited  
 as a court of law; it cannot lawfully enjoin the  
 25 world at large, no matter how broadly it words its  
 decree. If it assumes to do so, the decree is pro  
 tanto brutum fulmen, and the persons enjoined are  
 26 free to ignore it. 42 F.2d at 832. In order to be  
 subject to the contempt power, Putnam "must either

abet the defendant, or must be legally identified with him." Id. at 833. Although Judge Hand wrote his *Alemite* opinion before the adoption of Rule 65(d), the pronouncements therein continue to be regarded as the classic statement of limitations on a court's equitable powers. Similarly, Justice Jackson's oft-cited opinion for the Court in *Regal Knitwear* emphasizes the limits on the permissible scope of an injunction:

The courts \* \* \* may not grant an enforcement order or injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law.

*Lynch*, 639 F.Supp. 69 at 72.

Although Plaintiff does not include FRCP Rule 65(d) in its analysis, the court finds this rule telling, especially in light of the recent amendment<sup>3</sup> in 2007 to this rule. Rule 65(d) reads:

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe

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<sup>3</sup>The language in rule 65 was recently amended this year. Rule 65(d)(2) clarifies two ambiguities in former Rule 65(d). The former rule was adapted from former 28 U.S.C. § 363, but omitted a comma that made clear the common doctrine that a party must have actual notice of an injunction in order to be bound by it. Amended Rule 65(d) restores the meaning of the earlier statute, and **also makes clear the proposition that an injunction can be enforced against a person who acts in concert with a party's officer, agent, servant, employee, or attorney.** [Our emphasis added]. See 2007 Revised Edition Federal Civil Judicial Procedure and Rules, "2007 Amendments," at pp. 316-17.

1 in reasonable detail, and not by reference to the  
2 complaint or other document, the act or acts sought  
3 to be restrained; and is binding only upon the  
4 parties to the action, their officers, agents,  
servants, employees, and attorneys, and upon those  
persons in active concert or participation with them  
who receive actual notice of the order by personal  
service or otherwise.

5

6 Additionally, case law supports the notion that nonparties may be found  
7 in contempt of an injunction provided they have actual notice of the  
8 injunction and aid or abet in its violation. See *McGraw-Edison Co. v.*  
9 *Preformed Line Products Co.*, 362 F.2d 339, 344 (9<sup>th</sup> Cir. 1966) (citations  
10 omitted). It is clear that for Ms. Brown to be subject to the court's  
11 contempt powers, there must be at the very least a strong identity of  
12 interests between the enjoined defendant Amphion and the would-be  
13 contemnor. Applied to this case, that means there must exist a  
14 commonality of incentives and motivations between Amphion and Ms. Brown.  
15 Although Ms. Brown would like the court to view her interests as  
16 independent and that her rights have not been adjudged according to law,  
17 in an effort to free her from the bounds of the Permanent Injunction, the  
18 court cannot do so.

19 Taking a look at the language of the Permanent injunction, while it  
20 is not clear whether Ms. Brown is an agent, she falls within the "all  
21 other persons . . . claiming to act in Defendants' behalf, or in concert  
22 or participation with Defendants, and any other individual or entity duly  
23 served with a copy of this order, are hereby restrained and enjoined from  
24 interfering with the plaintiff's security interest." Ct. Rec. 36,  
25 Permanent Inj., at 3, ¶2. Ms. Brown's argument that as a possible  
26 shareholder the Permanent injunction does not apply to her does not square

1 with the case law. Court's orders apply equally to a company's  
2 shareholders because they are in privity with the company party. See  
3 *United States v. Geophysical Corp. of Alaska*, 732 F.2d 693, 697 (9th  
4 Cir.1984) ("A person technically not a party to the prior action may be  
5 bound by the prior decision if his interests are so similar to a party's  
6 that that party was his 'virtual representative' in the prior action.")  
7 (quoting *United States v. ITT Rayonier, Inc.*, 627 F.2d 996, 1003 (9th  
8 Cir.1980)).

9 The court finds Ms. Brown's argument that the Permanent Injunction  
10 is too ambiguous to apply to her disingenuous also. There is no question  
11 that Ms. Brown was in privity with Amphion as a shareholder based on her  
12 e-mails and the declarations of Dr. Condon. There is no doubt that the  
13 language in the Permanent Injunction would put anyone served with a copy  
14 of the same on notice that he or she may be limited in taking certain  
15 actions. Paragraph 2 of the injunction alerts potential contemnors that  
16 they should not take any action to interfere with Red 1's security  
17 interest in the Collateral which is unambiguously defined.

18 Ms. Brown does not deny that she has Collateral as she declares that  
19 she is seeking a declaratory judgment in the Superior Court of Chatham  
20 County, Georgia on June 8, 2007 to determine whether her interest in the  
21 equipment at issue is superior to the interest claimed by Red 1. The  
22 court finds that her actions before filing her state court suit would  
23 support the "active concert or participation" rationale for establishment  
24 of personal jurisdiction.

25 Having established personal jurisdiction over Vickie Brown for  
26 purposes of this contempt proceeding, the court must determine in its

1 final step of the analysis whether Ms. Brown has violated the Permanent  
2 Injunction. Based on the evidence before the court, it concludes that Ms.  
3 Brown has interfered with Red 1's security interest. Ms. Brown was  
4 represented by an attorney and the facts indicate she clearly received  
5 constructive knowledge as early as April 20, 2004 with the UCC-1 filing  
6 in Georgia and that she had actual knowledge of the same as early as  
7 September 4, 2006, before her alleged purchase. Ms Brown's actions can  
8 not be viewed a wholly independent but rather inextricably connected with  
9 Amphion, who was clearly subject to the injunction.

10 The court finds that Ms. Brown's motion to dismiss this case and her  
11 request for attorney's fees must be denied. The district court's power  
12 to issue a contempt order depends, at least in part, on its subject matter  
13 jurisdiction over the underlying action. Clearly this court had subject  
14 matter jurisdiction over the underlying action based on diversity. The  
15 court also has personal jurisdiction over the alleged contemnor as  
16 explained above. The court finds that Ms. Brown is in contempt of the  
17 Permanent Injunction based on the clear evidence before the court.

18 **IT IS ORDERED** that:

19 1. Vickie Brown's Motion to Dismiss for Lack of Personal Jurisdiction  
20 and for an Award of Attorneys' Fees, Ct. Rec. 49, filed September 28, 2007  
21 is **DENIED**.

22 2. Vickie Brown is found to be in contempt of the Permanent  
23 Injunction issued on February 28, 2007. Vickie Brown is hereby enjoined  
24 from selling the Collateral. Vickie Brown shall be required to comply  
25 with the Permanent Injunction and surrender the Collateral to Red 1  
26 Investments.

3. Plaintiff's request for attorney's fees and costs incurred in investigating, policing, and enforcing the Permanent Injunction is DENIED without prejudice.

4. The District Court Executive is DIRECTED to file this Order, and provide copies to all counsel, including Vickie Browns's counsel.

IT IS SO ORDERED.

**DATED** this 9th day of November, 2007.

s/Lonny R. Suko

LONNY R. SUKO  
United States District Judge